SCOTTISH STATUTORY INSTRUMENTS

2003 No. 344

NATIONAL HEALTH SERVICE

The National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003

Made - - - -	*30th June 2003*
Laid before the Scottish Parliament - - - -	*3rd July 2003*
Coming into force - -	*30th September 2003*

The Scottish Ministers, in exercise of the powers conferred by section 24(1), (3) and (4) of, and paragraphs 8, 9 and 13 of Schedule 3 to, the Superannuation Act 1972(**1**) and of all other powers enabling them in that behalf hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 and shall come into force on 30th September 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"additional period of service" means a period of service calculated in accordance with regulation 5;

"early retirement regulations" means any regulations made under section 34A of the National Health Service (Scotland) Act 1972(**2**), section 260 of the Local Government Act 1972(**3**), article 19 of, and Schedule 3 to, the Superannuation (Northern Ireland) Order 1972(**4**) or article 3 of the Superannuation (Northern Ireland) Order 1973(**5**);

(**1**) 1972 c. 11. Section 24 was amended by section 13(1) of, and paragraph 10 of Schedule 2 to, the Police Pensions Act 1976 (c. 35). The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of article 2 of and Schedule 1 to the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I.1999/1750).
(**2**) 1972 c. 58. Section 34A was inserted by paragraph 141 of Schedule 4 to the National Health Service Reorganisation Act 1973 (c. 32).
(**3**) 1972 c. 70.
(**4**) S.I. 1972/1073 (N.I. 10), as amended by S.I. 1990/1509 (N.I. 13).
(**5**) S.I. 1973/962 (N.I. 13).

"employing authority" means–

(a) a Health Board, Special Health Board, or the Common Services Agency for the Scottish Health Service established under section 2 and section 10 of the National Health Service (Scotland) Act 1978(**6**);

(b) a National Health Service Trust established under section 12A of the National Health Service (Scotland) Act 1978(**7**);

(c) the Mental Welfare Commission established under section 2 of the Mental Health (Scotland) Act 1984(**8**); or

(d) any other body that is constituted under an Act relating to health services and which the Scottish Ministers agree to treat as an employing authority for the purposes of the scheme;

"entitled officer" means a person to whom these Regulations apply in accordance with regulation 3;

"local authority" has the same meaning as in section 235(1) of the Local Government (Scotland) Act 1973(**9**);

"local government compensation regulations" means any regulations made under section 219 of the Local Government (Scotland) Act 1973 or section 24 of the Superannuation Act 1972 in relation to local government service and the corresponding provisions in force in England and Wales, Northern Ireland and the Isle of Man;

"the material date", in relation to an entitled officer, means the date on which that person became an entitled officer;

"officer" has the same meaning as in the Superannuation Scheme Regulations except that it shall not include a practitioner as defined in regulation A2 (interpretation) of the Superannuation Scheme Regulations(**10**), other than a dental practitioner who satisfies the conditions set out in regulation E3(**11**) of the Superannuation Scheme Regulations (early retirement pension (redundancy etc.)).

"the Superannuation Scheme Regulations" means the National Health Service Superannuation Scheme (Scotland) Regulations 1995(**12**);

"the 1980 Regulations" means the National Health Service (Superannuation) (Scotland) Regulations 1980(**13**);

"pensionable employment", in relation to an entitled officer, has the meaning given by regulation A2 of the Superannuation Scheme Regulations;

"pensionable service", in relation to an entitled officer, has the meaning given by regulation A2 of the Superannuation Scheme Regulations;

"previous Compensation Regulations" means the National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 1981(**14**);

(2) In these Regulations, unless the context otherwise requires–

(**6**) 1978 c. 29; the definition of "Special Health Board" was inserted into section 2 by section 28 of the National Health Service and Community Care Act 1990 (c. 19), ("the 1990 Act"); section 10 was amended by the Health Services Act 1980 (c. 53), Schedule 6, paragraph 2, by the 1990 Act, Schedule 10 and by the Health Act 1999 (c. 8), Schedule 4, paragraph 44.
(**7**) Section 12A was inserted by the 1990 Act, section 31.
(**8**) 1984 c. 36.
(**9**) 1973 c. 65. The definition of "local authority" was substituted by the Local Government etc. (Scotland) Act 1994 (c. 39), section 180(1) and Schedule 13, paragraph 92(66).
(**10**) The definition of "practitioner" was inserted by S.S.I. 2003/55.
(**11**) Regulation E3 was amended by S.I. 1997/1916 and 1998/1593.
(**12**) S.I. 1995/365, as amended by S.I. 1997/1434 and 1916, 1998/1593, and 1999/443 and S.S.I. 2001/437 and 465 and 2003/55 and 270.
(**13**) S.I. 1980/1177 (revoked by S.I. 1995/365, but with savings related to regulations 46, 50, 51, 52 and 78).
(**14**) S.I. 1981/1785, as amended by S.I. 1985/2036 and 1992/3046, and S.S.I. 2001/437.

(a) any reference to a numbered regulation or Schedule is a reference to the regulation or, as the case may be, Schedule bearing that number in these Regulations; and

(b) any reference in a regulation or Schedule to a numbered paragraph is a reference to the paragraph bearing that number in that regulation, or as the case may be, that Schedule.

Persons to whom the Regulations apply

3. These Regulations shall apply to an officer who on ceasing to be employed in the employment of an employing authority becomes entitled to benefits in accordance with regulation E3 of the Superannuation Scheme Regulations (early retirement pension (redundancy etc)).

Payment of compensation

4.—(1) Subject to the provisions of these Regulations, an entitled officer shall be entitled, with effect from the material date, to receive from the Scottish Ministers compensation in accordance with paragraph (2) and, where the entitled officer is also entitled to a lump sum under regulation E7 of the Superannuation Scheme Regulations (lump sum on retirement), paragraph (3).

(2) The compensation payable in accordance with this paragraph shall consist of an annual allowance at a rate equal to the rate by which that pension would be increased in accordance with the Superannuation Scheme Regulations if a period equal to the period with which the entitled officer is credited under regulation 5 were added to the pensionable service in respect of which that pension is payable.

(3) The compensation payable in accordance with this paragraph shall consist of a lump sum equal to the amount by which the lump sum payable under regulation E7 of the Superannuation Scheme Regulations would be increased in accordance with those Regulations if a period equal to the period with which the entitled officer is credited under regulation 5 were added to the pensionable service in respect of which that lump sum is payable.

Crediting of additional period of service

5.—(1) Subject to paragraphs (2), (3), (5), (7) and (8), for the purpose of calculating the amount of the annual allowance payable in accordance with regulation 4(2) and, where applicable, the amount of the lump sum payable in accordance with regulation 4(3)–

(a) where the total amount of–

(i) an entitled officer's pensionable service, including any service to which regulation R4(3) of the Superannuation Scheme Regulations (members doing more than one job) applies; and

(ii) any relevant optant service,

is not more than 10 years, the entitled officer shall be credited with an additional period of service equal to the aggregate of such pensionable service and any such relevant optant service; or

(b) where the total amount of–

(i) an entitled officer's pensionable service, including any service to which regulation R4(3) of the Superannuation Scheme Regulations applies; and

(ii) any relevant optant service,

is more than 10 years, the entitled officer shall be credited with an additional period of service of 10 years.

(2) The period of additional service credited to an entitled officer shall not exceed the amount necessary to make his or her total pensionable service reach–

(a) 40 years; or

(b) the maximum length of pensionable service the entitled officer would have been able to accrue had he or she remained in pensionable employment until retirement age,

whichever is the lesser.

(3) In determining the additional period of service to be credited to a mental health officer under paragraphs (1) and (7), no account shall be taken of the provisions in regulation R3(5) of the Superannuation Scheme Regulations (mental health officer – doubling of pensionable service).

(4) For the purposes of paragraphs (1) to (3) above–

(a) "relevant optant service" means–

(i) service in respect of which an entitled officer was subject to regulation 50 of the 1980 Regulations (persons subject to non-statutory superannuation schemes and arrangements) and which terminated within the 12 months immediately before the beginning of the entitled officer's pensionable service; and

(ii) in the case of a person who became an officer in the circumstances described in regulation 2(2) of the 1980 Regulations (interpretation), any service accrued in the employment of a local authority by virtue of which the person was, immediately before becoming an officer, a member of such a scheme as is referred to in regulation 50 of those Regulations;

(b) "retirement age" means, in relation to an entitled officer, the age at which, under any written condition of employment, the entitled officer may be required to retire or, if there is no such condition, the age of 65.

(5) Where–

(a) an entitled officer has received–

(i) a redundancy payment under the Employment Rights Act 1996(**15**); or

(ii) a corresponding payment under the arrangements of the Whitley Councils for the Health Services of Great Britain; or

(iii) a payment made by virtue of any arrangement made pursuant to paragraph 20(2) of Schedule 7A to the National Health Service (Scotland) Act 1978(**16**) (National Health Service Trusts – general powers),

in respect of the cessation of the employment referred to in regulation 3; and

(b) that payment has not been reduced to take account of any additional period of service with which the officer may have been credited under paragraph (1),

any such additional period of service under paragraph (1) shall not exceed 6 years and 243 days.

(6) For the purposes of this regulation, where the pensionable service of an entitled officer consists of or includes pensionable service in part-time employment, such service shall count at its full length.

(7) Where the pensionable service of an entitled officer includes service in the employment of an employing authority before 4th November 1980, that officer shall be entitled to an additional period of service calculated in accordance with the provisions of regulation 5(1) (persons who became entitled officers between 2nd December 1976 and 3rd November 1980) and regulation 5(4) (service before 4th November 1980) of the previous Compensation Regulations if such a calculation would place that entitled officer in a better position than he or she would have been in had the additional period of service been credited in accordance with this regulation.

(**15**) 1996 c. 18.

(**16**) This Schedule was inserted by Section 32 of, and Schedule 6 to, the National Health Service and Community Care Act 1990 (c. 19).

(8) Subject to paragraph (9), where an entitled officer is in receipt of any payment specified in paragraph (11) there shall be deducted from the additional period of service which, but for this paragraph, would have counted as pensionable service by virtue of paragraph (1) or (7), any additional years or deemed added years which were taken into account for the purposes of the calculation of that payment.

(9) The Scottish Ministers may direct that the deduction in accordance with paragraph (8) should not be made, or that a lesser number of years should be deducted, where–

(a) an entitled officer is in receipt of a payment specified in paragraph (11); and

(b) there are differences between–

(i) the terms of the employment in respect of which that payment is received; and

(ii) the terms of the employment referred to in regulation 3; and

(c) by reason of those differences, the deduction would be disproportionately large.

(10) For the purposes of paragraphs (8) and (9)–

(a) "additional years", in the case of an entitled officer who receives a payment referred to in paragraph (11), means the additional period of service with which that officer was credited for the purpose of making that payment and which had on the calculation of that payment the corresponding effect that the additional period of service has on the annual allowance payable under these Regulations;

(b) any additional years or deemed added years shall not be taken into account if these have been taken into account for the purpose of reducing any payment specified in paragraph (11);

(c) where a payment specified in paragraph (11) has been enhanced by a sum, being a fraction of the annual rate of remuneration, calculated in sixtieths, each one sixtieth shall be deemed to be an added year for the purposes of this regulation and the expression "deemed added years" shall be construed accordingly;

(d) the additional period of service shall be deemed to commence on the material date;

(e) the additional years or deemed added years shall be deemed to commence on the day after the occurrence of the event in respect of which the payment specified in paragraph (11) became payable;

(f) any additional years or deemed added years which relate to a period before the material date shall not be taken into account.

(11) The payments referred to in paragraphs (8) to (10) are–

(a) an annual allowance payable under these Regulations;

(b) any annual compensation payable immediately or prospectively under the local government compensation regulations or any other regulations made under section 24 of the Superannuation Act 1972 (compensation for loss of office, etc.);

(c) any annual compensation payable under a scheme made under section 1 of the Superannuation Act 1972 (superannuation schemes as respects civil servants, etc.);

(d) any annual benefit payable under the early retirement regulations; or

(e) any other payment provided for by regulations which have like effect to the regulations referred to in sub-paragraphs (a), (b) or (d).

Calculation of compensation

6.—(1) Subject to paragraph (2), the compensation payable under regulation 4 in respect of the additional period of service of an entitled officer shall be calculated in like manner as that officer's pension under regulation E3 of the Superannuation Scheme Regulations and, where applicable,